



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 4 – LAND LAW

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Candidate performance varied. Some candidates clearly had a good knowledge across the Unit Specification and demonstrated good subject knowledge but to gain marks candidates need to ensure syllabus coverage in their studies. Overall, though, performance was disappointing.

Candidates need to be specific in their replies, for example, if being asked to cite the grounds on which application can be made to the Upper Tribunal (Lands Chamber) to discharge a covenant, they need to be fairly precise in citing the statutory grounds.

The weakest candidates generally showed a lack of knowledge and understanding of the unit specification.

Candidates are reminded of the need to be precise if asked to cite a statute (as to its name and date) and, if asked to cite the section number, again this needs to be accurate.

It is felt that, for this session, marks were lost by lack of knowledge of key parts of the syllabus but also, on the whole, by poor application of the law to the facts of the chosen scenario.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Was answered well by many candidates, but it was surprising that it was not answered very well by a larger number of candidates. While most candidates were aware of relevant cases (and so gained one of the available marks), many were not able to define trespass or explain the conclusion of Bernstein v Skyviews (1978) and so lost marks. Question 1 (b) was answered well with virtually all candidates gaining the available mark.

Question 2

Was answered well by many candidates although a significant number were not able to identify any items included in the definition and so did not gain any marks.

Question 3

Was answered poorly – while many candidates were aware of restrictions and so gained 1 of the available marks, a significant majority of candidates were not aware of notices as a means of protection of third-party interests.

Question 4

Was answered well by many candidates but, given that this question has appeared on a number of past papers, it remains disappointing that so many candidates did not gain all/nearly all of the available marks. Many candidates did not cite the correct statute/section number, and some confused their answer with the requirements for a valid contract.

Question 5

Was also answered well by many candidates although a significant number gained marks for identifying the class of title but were unable to give any explanation as to when that class might be granted and so lost available marks.

Question 6

Was answered well by a reasonable number of candidates which was pleasing.

Question 7

Was answered well by a pleasing number of candidates. Many candidates gave excellent answers to Question 7(b), in particular, gaining all of the available marks.

Question 8

Was not answered well with many candidates just repeating the question in their answer, for example, the benefit of a covenant is a covenant that benefits or using similar wording. Question 8 (b) was also not well answered for the same reason. Many candidates gained no marks for their answers to Question 8 (c) showing a lack of syllabus coverage in their preparations.

Question 9

Was also not particularly well answered which is surprising when this question has been asked quite regularly in previous exam sessions. Candidates tended to not be specific in citing the circumstances when the Upper Tribunal (Lands Chamber) can order that a covenant is discharged and so lost marks.

Question 10

Was answered well by most candidates with many candidates gaining full marks or nearly all of the available marks.

Question 11

Was not answered well with many candidates referring to the rules relating to prescription although a significant minority of candidates were able to gain full marks with their reply to this question. Candidates are reminded of the need for syllabus coverage with their revision.

Section B**Scenario 1****Question 1**

Was generally well answered by most candidates who chose this scenario and candidates showed a pleasing ability to apply the law to the facts of the scenario and gave some very good advice with sound reasoning offered for that advice.

Question 2

Was also generally well answered with many candidates obtaining all or a significant number of the available marks. However, a significant number of weaker candidates seemed to be unaware of the possibility of severance of the joint tenancy by written notice.

Question 3(a)

Was not answered well by the majority of candidates. Most did not seem to know the relevant statute/section or the provisions of that statute.

(b) - was, similarly, also not answered well by most candidates.

Question 4

Was answered reasonably well by many candidates although a surprising number of candidates took the view that the landowner (as opposed to the tenant) would be responsible for applying to register the lease.

Question 5

Was also reasonably well answered although candidates did not have the depth of knowledge in order to gain the higher marks available to them.

Scenario 2

Question 1

Was answered reasonably well by the relatively small number of candidates who chose this scenario. Candidates showed a pleasing ability to apply the law (the tests) to the facts of the scenario and to arrive at their conclusions as to whether the paving stones, curtains and carpets are fixtures or fittings. Marks were however lost by candidates not seeming to know sufficient detail in order to gain all of the available marks.

Question 2

Was, again, reasonably well answered with some of the candidates who chose this scenario gaining a significant number of the available marks.

Question 3(a)

Was not well answered. A small number of candidates referred to the doctrine of privity of contract but did not link this to Alan and Brenda being the original covenantee and covenantor respectively.

(b) - was also well answered by most candidates with many scoring all or very nearly all of the available marks.

Question 4(a)

Was not answered well with many candidates seemingly unaware of the conditions set out in Tulk v Moxhay (1848).

(b) - was not well answered as, if the candidate does not know the conditions, they cannot apply them to the facts of the scenario.

Question 5

Was answered reasonably well by a small minority of candidates who were able to recognise that, while negative in form, the covenant is positive in substance. However, most candidates who chose this scenario did not appear to recognise this and so did not gain marks for this question.

Scenario 3

Question 1

Was well answered by many of the small number of candidates who chose this scenario.

Question 2(a)

Was not well answered although a small minority of stronger candidates were able to refer to the relevant case and the law in respect of a 'right to a view.'

(b) - Was answered well by only a minority of candidates

(c)

Was not well answered – most candidates seemingly unaware of the issue that the claim to a right to park could amount to a claim to total possession. There was, generally, only a very limited application of the facts of the scenario to the relevant law.

Question 3(a)

Was reasonably well answered with a number of candidates identifying the trespass both from the foundations and the wire hanging over but a minority of the candidates who chose this question achieved no marks.

(b) - was well answered with most candidates gaining both of the available marks.

Question 4(a) - Was not well answered.

(b)

Was answered well by most of the candidates who chose this scenario. A pleasing number correctly identified the relevant statute (and section number) and the other points needed to gain all/most of the available marks.

(c) - was not well answered although a very small minority gained all/virtually all of the available marks.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 UNIT 4 – LAND LAW****SECTION A**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> Define trespass as intrusion on land without permission Trespass occurs at height below that needed by landowner for reasonable enjoyment Case e.g. Bernstein v Skyviews (1978) (accept Civil Aviation Act 1982) 	3
1(b)	One of: <ul style="list-style-type: none"> Injunction Damages (accept compensation) 	1
Question Number	Suggested Points for Responses	Marks (Max)
2	Any three of: <ul style="list-style-type: none"> Mines Minerals Buildings/parts of buildings (accept fixtures) Land of any tenure Corporeal hereditaments Incorporeal hereditaments (accept example) 	3
Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> Notice Restriction 	2
Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> Section 1 of Law of Property (Miscellaneous Provisions) Act 1989. in writing be clear on its face it is intended to be a deed be validly executed which means it must be signed, witnessed and delivered. (accept if candidates only refer to signed and witnessed) 	4
Question Number	Suggested Points for Responses	Marks (Max)
5	Any two of the following; Absolute freehold title <ul style="list-style-type: none"> granted when land registrar fully satisfied with title Qualified freehold title granted subject to some defect noted in register Possessory freehold title granted when e.g. deeds lost/no proof of ownership, often granted to squatters 	4

Question Number	Suggested Points for Responses	Marks (Max)
6	Any two of: <ul style="list-style-type: none"> introduced by Commonhold and Leasehold Reform Act 2002 relates to properties where units are interdependent e.g. flats commonhold created out of a registered freehold property registered as 'freehold land' property split into units individual unit holders registered as freehold owner of their unit 	2
Question Number	Suggested Points for Responses	Marks (Max)
7(a)	<ul style="list-style-type: none"> on sale of trust land when legal title is held by trustees as on behalf of beneficiaries 	2
7(b)	<ul style="list-style-type: none"> Purchase money is paid on sale To at least two trustees Result: buyers take free of trust interests (credit beneficial interests swept off the land)	3
5 marks		
Question Number	Suggested Points for Responses	Marks (Max)
8(a)	<ul style="list-style-type: none"> (i) right to enforce covenant (ii) obligation to keep covenant 	2
8(b)	<ul style="list-style-type: none"> by annexation (accept under s.78 LPA 1925) By assignment Through a building scheme (scheme of development) (credit reference to <i>Elliston v Reacher</i>) 	3
5 marks		
Question Number	Suggested Points for Responses	Marks (Max)
9	<ul style="list-style-type: none"> covenant is obsolete due to changes in the character of the property or neighbourhood continued existence would prevent reasonable use of the land person with the benefit have expressly or impliedly consented to its discharge the discharge or modification will not injure the person with the benefit 	4
Question Number	Suggested Points for Responses	Marks (Max)
10	Any four of: <ul style="list-style-type: none"> repossession Sue in debt Sale Appoint receiver Foreclosure 	4

Question Number	Suggested Points for Responses	Marks (Max)
11	Any three of: <ul style="list-style-type: none"> • unity of ownership and occupation • exercise of quasi easements • continuous and apparent • necessary to reasonable enjoyment of the land • division of the land 	3
Section A Total:40 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1	Purchase as tenants in common rather than joint tenants Separate shares No right of survivorship Share can be left by will Appropriate as unequal contribution/not e.g. spouses (credit any other valid reason)	5
Question Number	Suggested Points for Responses	Marks (Max)
2	Not correct Joint tenancy can be severed in equity by written notice Under s.36 LPA 1925 Letter counts as written notice Sufficient even if not read Relevant case e.g. Kinch v Bullard (1998) Results as tenancy in common with separate shares in equity Possible further points at standardisation	7
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	Oliver holds legal title to trust of land for himself and Pauline Pauline is beneficiary of trust under Raj's will s.12 Trusts of Land and Appointment of Trustees Act 1996 beneficiary has right to occupy property where purpose of trust was for occupation apply: property purchased for occupation of Oliver and Raj, so Pauline does have right	5
3(b)	s.11 TLATA 1996 trustees' duty to consult beneficiaries when exercising any functions apply: sale or leasing is trustee function of trust of land so Oliver must consult Pauline Credit: 'unless excluded by any trust deed'	3
8 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4	Lease exceeding 7 years Must be registered LRA 2002 Tenant responsible	4
Question Number	Suggested Points for Responses	Marks (Max)
5	Production of title deeds Starting with good root of title Conveyance or mortgage At least 15 years old Then show unbroken chain of title to current owner Shown by abstract or epitome of title	6
Scenario Total: 30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1	Issue of fixtures: item previously chattel/fitting now fixed to land Result: fixture passes automatically on sale to buyer, Credit reference to tests of degree and purpose of annexation Apply: paving stones fixtures Carpets and curtains not fixtures (but credit candidates who identify fitted carpets could be fixtures) Apply: Brenda not entitled to take paving stones Relevant case e.g. Taylor v Hamer (2002), Holland v Hodgson (1872)	7
Question Number	Suggested Points for Responses	Marks (Max)
2	Supply by Brenda of Fittings and Contents form before exchange of contracts lists items to be removed/left agreement of buyer needed for removal of fixtures	5
Question Number	Suggested Points for Responses	Marks (Max)
3	Identify as freehold covenant Alan original covenantee Brenda original covenantor Privity of contract with Brenda As she is no longer landowner, no real remedy against her	5
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	Covenant must be restrictive/negative Shows intention: to be bound/ burden to pass Covenant must benefit covenantee's land Registration against burdened land Tulk v Moxhay (1848)	5

4(b)	Covenant is positive Burden of positive covenant does not pass Case e.g. Austerberry v Oldham Corporation (1885) Result: conditions do not exist Application: David is not bound	5
10 marks		
Question Number	Suggested Points for Responses	Marks (Max)
5	Covenant negative in form but positive in substance answer would be no different, burden does not pass	3
Scenario Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1	Identify easement Re Ellenborough Park (1956) two pieces of land (accept 'dominant and servient') in separate ownership easement benefits dominant tenement capable of grant (not vague, not claim for total possession, no expense on servient owner)	7
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	Not capable of grant as too vague Case: Re Aldred's case Conclusion: characteristics not present	3
2(b)	There are two pieces of land In separate ownership Use of path personal benefit only, not to land Case e.g. Hill v Tupper	4
2(c)	Discuss whether claim for total possession Case e.g. Copeland v Greenhalf Only small part of field used Other characteristics there credit reasoned conclusion on whether easement	4
11 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	Identify trespass by foundations into land Define: intrusion into another's land without permission Trespass into Harry's airspace by wire hanging over Relevant case e.g. Bernstein	4
3(b)	Injunction Damages if actual damage caused	2
6 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	Express easement	1
4(b)	Granted by deed For a term equivalent to a legal estate Section 52 Law Property Act 1925	2
4(c)	Registration Benefit of easement registered in Harry's property register Notice of easement registered in Ivan's charges register	3
		<i>6 marks</i>
Scenario Total: 30 marks		